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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,076	02/03/2004	Joseph M. Asher	075234.0103	1945

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DALLAS, TX 75201-2980

EXAMINER

LEIVA, FRANK M

ART UNIT	PAPER NUMBER
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3714

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	02/14/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 02/14/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/771,076

Applicant(s)

ASHER ET AL.

Examiner

Frank M. Leiva

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/11/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date See Continuation Sheet.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :9/14/05; 9/19/05; 11/3/05; 6/26/06.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 53 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim merely involves the manipulation of an abstract idea 'determining an amount of a total payout' and/or 'determining an amount to be paid'. There is no practical application of this abstract idea claimed. Thus the claims do not meet the requirements for statutory subject matter under 35 U.S.C. 101.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 54 and 55 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure, which goes to make up the device, must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-12, 14-17, 22-34, 36-39, 44-49, 52, 53, and 56-58 are rejected under 35 U.S.C. 102(e) as being anticipated by Brenner et al. (USPN 6,554,708 B1).

7. With regard to claims 1, 23, 45, 53, and 56-58, Brenner discloses an interactive wagering system that can manage bets and monitor and process the information provided by the users to the system. Specifically, the term "bet" inherently includes the process of an agreement between two parties on a contest or contingent issue. Brenner's device interactive system allows for the user to select from a variety of wager types a selection of a first number of events selected from a group of events; a selection of a respective participant for each of the first number of events selected (i.e.: the wagered winner), and an bet amount (see col. 7: In 39-45). Additionally, Brenner uses the bet amount to form a common feature in the gambling arts known as a betting pool (see col. 12: In 10-53). The betting pool is then used in part to determine the amount of a total payout made to the users/participants (see col. 5: In 45-61). Furthermore, Brenner's system implements the use of totalisators. Totalisators relay information from the various racetracks to deliver racing data to the system. This allows the system to accurately determine the one or more winning bets of the plurality of bets by determining for each of the plurality of bets if each selected participant corresponds to the winning participant for each of the first number of events selected in the bet (see col. 5: In 40-62). The information provided by the totalisators also allow the system to determine the amount to be paid for a winning bet of the one or more winning bets based on the number of winnings bets, the amount of the total payout and the bet amount of the winning bet of the one or more winning bets (see col. 12: In 10-54).

8. Claims 2-3 and 24-25, Brenner discloses a method comprising the ability to receive results of the group of events, the results identifying a winning participant for each event of the group of events and determining one or more winning bets of the one or more bets based on the results (i.e.: ability to determine which wagered made on the system were winning bets out of the various events). Brenner also discloses the use of the information provided by the

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totalisators in order to determine for each of the one or more bets if the selected respective participant corresponds to the winning participant for each of the events selected in a bet (see col. 4: In 25-46, col. 6: In 15-26).

9. Claims 4-6 and 26-28, Brenner discloses a system that manages bets where a winning bet is flagged if each selected respective participant corresponds to the winning participant for each of the first number of events selected in the bet; or at least some of the selected respective participants correspond to a winning participant for each of the first number of events selected and the bet of the one or more bets includes a winning participant of at least one of a specified event, at least as high as the specified amount or having specified odds (see col. 3: In 35-42, col. 4: In 25-67, col. 8: In 46-63).

10. Claim 7 and 29, Brenner discloses a system wherein the processor is operable to determine an amount to be paid for each winning bet based on the number of winning bets and the amount of the total payout (see col. 4: In 25-57, col. 6: In 15-30).

11. Claims 8-10 and 30-32, Brenner discloses a processor that is operable to determine an amount to be paid to each winning bet based on the number of winning bets and the amount of the total payout (see col. 4: In 25-57).

12. Claims 11, 33, 46, and 47, Brenner's system can increase a payout for a first winning bet of the one or more bets if at least one of the first winning bets selected events comprises a specified event (i.e.: the payout changes based on the odds concerning the specific wager in addition, and the fluctuations in order to balance the pool) (see col. 3: In 60-col. 4: In 46, col. 7: In 15-20, In: 39-45, col. 10: In 40-65).

13. Claims 12, 34, and 48, Brenner discloses a system that is able to determine the amount of a total payout based at least in part on the betting pool comprised after applying a commission rate to the betting pool (see col. 3: In 60-67, col. 5: In 38-53).

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14. In regards to claim 14-17, 36-39 and 49, Brenner discloses a processor that can cancel at least one event of the group of events, receive results of the group, the results identifying a winning participant for at least one event of the group of events, and determine one or more winning bets by determining if the selected respective participants corresponds to the winning participant for the wagered bets by the player. Furthermore, Brenner discloses a system wherein the first number of events comprise horseracing events held at different tracks. Additionally, the first of number of events comprise events held on different days (see col. 6: ln 13-30, col. 7: ln 46-62, col. 10: ln 60-65, col. 12: ln 10-53).

15. Claim 22, 44, and 52, Brenner discloses a system wherein the processor is operable to communicate an adjustment parameter that provides a bonus to one or more bets upon satisfaction of the adjustment parameter (i.e.: in order to balance the pools) (see FIGS. 1-6, 11-14 and the related description thereof).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 18-21, 40-43, and 50-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner et al. as applied to claims above, and further in view of Mindes et al. (USPN 5,842,921).

18. Claims 18-21, 40-43, and 50-51 Brenner discloses a game wagering system that is capable of managing bets where a memory is operable to store one or more bets. The system allows for a user to select a first number of events selected from a group of events and a selective participant (i.e.: wagered winner) for each of the first number of events and a bet amount. Brenner also discloses a processor that is coupled to the bet amount to form a betting

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pool wherein the total payout is based at least in part on the amount in the betting pool.

Although, Brenner discloses the use of this system with horse racing it lacks in disclosing other events outside of genre of horse racing (see abstract).

19. Mindes et al. discloses an analogous wagering system that accepts bets input to be placed on betting pools. Mindes discloses a system wherein a data processing system and house allows for a betting pool to be maintain by the amount of bets that have been placed into the system (see FIGS. 1-3 and the related description thereof). Furthermore, Mindes et al. discloses that its system may be used for various types of sporting events such as football, basketball, or baseball (see col. 8: ln 45-67, col. 2: ln 15-61). Mindes teaches that by applying a system that can track betting behavior by placing an odds or handicap associated with the wager can make the experience more enjoyable for the user. It is also common in the art to allow for sports wagering systems to be applied to various types of sports activities therefore it would be obvious to one of ordinary skill in the art at the time of the invention to combine the system of Brenner with the teachings of Mindes to allow for an interactive wagering system that catered to more than just the horse-racing community.

20. Claims 13, 14, 35, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brenner as applied to claims above, and further in view of Skratulia et al. (USPN 5,452,899).

21. Brenner discloses a wagering game system that allows a plurality of users may participate in a betting pool on a horseracing event (see FIGS. 1-4 and the related description thereof). Brenner's system is able to determine an amount of a total payout to the users based in part at least on the betting pool, however lacks in disclosing a means of adding to the betting pool a over amount from a previous betting pool.

22. However, Skratulia teaches the use of a carryover amount of a general wagered pot in a wagering game wherein the leftover amount of the pot is added into the following pool. Skratulia provides the motivation for this method in a wagering game since in rare occasions the pool/pot

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may be distributed equally between several winners (see col. 5: ln 45-56). Therefore it would be obvious to one of ordinary skill at the time of the invention to combine Brenner's wagering system to include the method of distributing remaining portions of a pool to the next active pool.

Response to Amendment

23. The amendments to claims 1-6, 14, 15, 22-28, 36, 44, 45, and 52-58 filed on 11/11/2005 under 37 CFR 1.131 has been considered but are ineffective to overcome the references cited on the previous action.

Response to Arguments

24. Applicant's arguments filed 11/11/2005 have been fully considered but they are not persuasive.

25. Regarding the argument to the rejection of claim 1 "*However, Brenner does not disclose determining an amount of a total payout based at least in part on a betting pool formed from a combination of bet amounts of bets that each include a selection of a first number of events wherein at least one selected event of a first bet of the bets comprises a different event from at least one selected event of a second bet of the bets. Nowhere does Brenner disclose, teach or suggest determining a total payout based on a betting pool of bet amounts for a plurality of bets that may include at least one different event*", can be covered by the disclosure of Brenner et al, "For example, presently available terminals may allow a user to view "win" odds (the amount wagered on a runner to win versus the amount wagered on competing runners to win)" Brenner (col. 2:1-10), one can understand from wagered on competing runners that is a pool of bets and that the payback odds are dependant on the total wagers.

26. Similarly claims 23, 45, and 53 recite the same limitations and their rejections will stand.

27. Regarding the arguments to the rejections of claims 2-12, 14-17, 22, 24-34, 36-39, 44, 46-49, and 52, relate to the dependency to the independent claims, since the argument was found not persuasive, the rejections still stand under the same references.

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28. Regarding the arguments to the rejections of claims 13, 18-21, 35, 40-43, and 50-51, relate to the dependency to the independent claims, since the argument was found not persuasive, the rejections still stand under the same references.

Conclusion

29. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

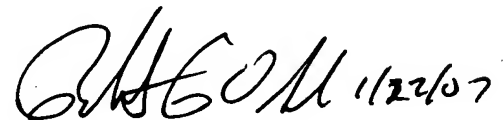
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank M. Leiva whose telephone number is (571) 272-2460. The examiner can normally be reached on M-Th 8:30am - 5:pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FML
01/17/2007

Handwritten signature of Robert Olszewski, dated 1/22/07.

ROBERT OLSZEWSKI
SUPERVISORY PATENT EXAMINER
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